UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:08-CR-100-1-F

UNITED STATES OF AMERICA,)	
v.)	ORDER
CALVIN LAVAN CLARK, Defendant.)	

Clark's Motion to Reconsider [DE-51] is DENIED. The order entered herein on June 8, 2012 [DE-49] denied Clark's Motion to Reduce his sentence pursuant to the 18:1 retroactive crack amendment to the advisory U.S. Sentencing Guidelines, under 18 U.S.C. § 3582(c)(2), because of his career offender status. Clark's Motion to Vacate, Set Aside or Correct his Sentence [DE-36]¹ is being held in abeyance pending the Fourth Circuit Court of Appeals' decision in *Powell v. United States*, No. 11-6152.

Clark may not circumvent the limitations imposed on § 2255 actions by seeking Simmons relief in a § 3582(c)(2) motion. Clark already has had a prior § 2255 motion denied on the merits, see Order [DE-27]. Rather than deny the instant motion outright as successive, however, the court is reserving ruling until the Fourth Circuit announces a decision in Powell on the chance that the decision possibly could benefit Clark. Clark may renew his Motion to Reconsider [DE-51], if appropriate, after this court rules on his § 2255 Simmons motion, in light of the Government's Motion to Dismiss [DE-41].

¹ Clark's § 2255 case is *Clark v. United States*, No. 5:08-CR-100-1/5:11-CV-558-F.

The court regrets the piecemeal manner in which Clark's motions must be addressed. However, the unstable and unpredictable status of the controlling law leave no choice.

SO ORDERED.

This, the **AO** day of June, 2012.

AMES C. FOX

Senior United States District Judge